

**BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan (SBN 287811)

*david@tomorrowlaw.com*

Jeffrey D. Klein (SBN 297296)

*jeff@tomorrowlaw.com*

Sarah H. Cohen (SBN 330700)

*sarah@tomorrowlaw.com*

Rafael Yedoyan (SBN 351499)

*rafael@tomorrowlaw.com*

1460 Westwood Blvd

Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiffs, MACKENZIE ANNE THOMA, as an individual and on behalf of other similarly situated persons

**UNITED STATES DISTRICT COURT  
CALIFORNIA CENTRAL DISTRICT**

MACKENZIE ANNE THOMA, a.k.a  
KENZIE ANNE, individually and  
on behalf of all similarly situated  
persons,

Plaintiff,

v.

VXN GROUP, LLC., a  
Delaware limited liability company;  
STRIKE 3 HOLDINGS, LLC., a  
Delaware limited liability company;  
GENERAL MEDIA SYSTEMS, LLC.,  
a Delaware limited liability company;  
MIKE MILLER, an individual; and  
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 2:23-cv-04901-WLH (AGR<sub>x</sub>)

**PLAINTIFF'S REPLY TO  
DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PROTECTIVE ORDER**

DATE: JULY 9, 2024

TIME: 11:00AM

JUDGE: HON. ALICIA G.  
ROSENBERG

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendants’ opposition to Plaintiff’s Motion for Protective is deficient as it fails to demonstrate that the need for discovery outweighs Plaintiff’s right to privacy. Indeed, Defendants’ right to discovery does not warrant a wholesale allowance to an overbroad fishing expedition as to Plaintiff’s private personal and financial information. Defendants take positions inconsistent with their previous motions, completely mischaracterize case law cited by Plaintiff, ignore other case law cited by Plaintiff, and make a bad faith request for attorneys’ fees.

**II. LEGAL ARGUMENT**

As is discussed in Plaintiff’s Motion for Protective order, privacy is a chief consideration for the courts when considering a parties’ interests in relation to a third-party subpoena. Defendants in their opposition seem to imply that Plaintiff does not have a right to privacy in her personal and financial information. This about-face turn from Defendants regarding the applicability of privacy rights in discovery is astonishing, considering in their Motion to Bifurcate Defendants continually argued the paramount importance of privacy for adult performers, a class of individuals Plaintiff falls within. **Docket #58 generally.** Yet, now when it comes to Defendants receiving discovery they deem to be important, Defendants seemingly assert that Plaintiff does not have a right to privacy in limiting what discovery is revealed, completely ignoring the civil law cases provided by Plaintiff indicating otherwise. Indeed, Defendants seem to recognize the importance of the right to privacy when it comes to discovery when it benefits them, but contend it does not exist when it would limit the discovery they would receive.

Although not clearly stated in FRCP Rule 26, courts have clearly established that employees have a right to privacy when concerning discovery. “Even when discovery of private information is found directly relevant to the issues of ongoing litigation, it will not be automatically allowed; there must then be a ‘careful balancing’

1 of the ‘compelling public need’ for discovery against the ‘fundamental right of  
2 privacy.’” *Artis v. Deere & Co.*, 276 F.R.D. 348, 352-353 (N.D. Cal. 2011). Also,  
3 “federal courts recognize a right of privacy implicit” for discovery. *RG Abrams Ins.*  
4 *v. L. Offs. of C.R. Abrams*, 342 F.R.D. 461, 498 (C.D. Cal. 2022); See Also *Gusman*  
5 *v. Comcast Corp.*, 298 F.R.D. 592, 598-599 (S.D. Cal. 2014). “A party has standing  
6 when, as here, that party has a privilege or personal right in the information sought  
7 to be disclosed.” *Burmayan v. Garfield Beach CVS, LLC*, No. 23-1788, 2023 WL  
8 8870130, at \*1 (C.D. Cal. Oct. 26, 2023). “Resolution of a privacy objection requires  
9 a balancing of the need for the information sought against the privacy right asserted.”  
10 *Id.* at \*3 (collecting cases).

11 Defendants want Plaintiff to specifically identify which specific documents to  
12 be produced by Mainboard, LLC would violate her right to privacy. First, no such  
13 burden exists. As is stated in *Aris*, privacy is a personal right to be considered when  
14 making determinations on discovery. All Plaintiff needs to do to show a protective  
15 order is necessary is demonstrate that she stands to be harmed by the production of  
16 the specific document requests and that her privacy rights will be breached if these  
17 requests are complied with, and that these harms outweigh the probative value of the  
18 requested discovery.

19 Plaintiff has met this burden by demonstrating that the documents requested  
20 from Mainboard, LLC include her private personal and financial dealings with other  
21 adult entertainment companies. Defendants’ contention that Plaintiff must  
22 specifically identify which documents will breach Plaintiff’s right to privacy is an  
23 extremely unreasonable burden that Defendants place on Plaintiff. The documents to  
24 be produced by Mainboard, LLC are not in Plaintiff’s possession. Defendants admit  
25 that discussions with Mainboard, LLC are ongoing and thus Plaintiff is unaware of  
26 exactly which documents Mainboard, LLC will produce. Therefore, Plaintiff cannot  
27 identify which documents that Mainboard, LLC will produce will violate her privacy  
28

1 rights. All that Plaintiff knows is stated in her Motion for Protective Order, that the  
2 requests for subpoena, on their face, materially affect Plaintiff's privacy rights.

3 **A. The Requested Information Asks Mainboard, LLC To Produce**  
4 **Information That Would Materially Harm Plaintiff**

5 Defendants never argue that the documents they request produce more  
6 probative value than the potential harm it does to Plaintiff. Plaintiff, on the other hand,  
7 argues that the information requested by Defendants will undoubtedly breach her right  
8 to privacy. Indeed, the requests themselves ask for information that is facially  
9 violative of Plaintiff's privacy rights. For example, as discussed in her Motion for  
10 Protective order, Subpoena Request No. 2 asks for Mainboard, LLC to produce  
11 documents including invoices. Invoices, by their very nature, contain sensitive private  
12 information, including her address, contact information, bank account number, and  
13 other identifying information that would reveal information about Plaintiff that will  
14 place her in harms way. This is the same exact issue that Defendants argued in their  
15 Motion to Bifurcate was impermissible. To reiterate, Defendant fully recognized the  
16 dangers of revealing the personal identifying information of an adult performer in  
17 their Motion to Bifurcate Discovery. **Docket #58, generally.** Yet, in their subpoena  
18 requests, Defendants have completely and utterly thrown these concerns to the  
19 wayside and have justified the conducting of a wholesale fishing expedition as to the  
20 private information of Plaintiff, simply because it benefits them at this juncture. These  
21 requests are purposefully made to be overbroad and violate Plaintiff's right to privacy  
22 to harm and harass Plaintiff.

23 **B. Plaintiff Has A Legally Cognizable Privacy Interest In Her Financial**  
24 **Information**

25 Individuals have a legally recognized privacy interest in their personal financial  
26 information. *Look v. Penovatz*, 34 Cal. App. 5th 61, 73 (2019). It is improper to allow  
27 a fishing expedition into Plaintiff's private financial history with other adult  
28 entertainment companies. Each and every request to Mainboard, LLC requires

1 Mainboard, LLC to produce private financial information. Request No. 9, for  
2 example, would require Mainboard, LLC to produce conversations between several  
3 individuals that “relate” to her “Talent Booking Data,” including confidential  
4 negotiations between Plaintiff and any number of the Relevant Users. While  
5 Defendants may be entitled to investigate as to what other companies Plaintiff  
6 customarily engaged in an independently established trade, occupation or business  
7 with, they are not entitled to sensitive financial information pertaining to Plaintiff,  
8 such as the rates she was paid while working with other companies, invoices for the  
9 work she performed, and the negotiations for the amount she would be paid for  
10 working with other companies. Defendants have completely failed to demonstrate  
11 how this sensitive financial information has more probative value than the harm  
12 Plaintiff will suffer should this sensitive information be revealed.

13 **C. Defendants Misconstrue The Laws Cited By Plaintiff**

14 Although certain cases cited by Plaintiff are related to criminal cases and the  
15 Fourth Amendment, Plaintiff is not objecting on the grounds of her Fourth  
16 Amendment right to protections against unlawful search and seizure, as Defendants  
17 misleadingly claim. Rather, Plaintiff is citing to those cases to underline the general  
18 principals found in privacy laws; that the United States has a deep-seated interest in  
19 protecting individuals and their rights to privacy.

20 For example, Plaintiff cites to *United States v. Heckenkamp*, 482 F.3d 1142  
21 (9th Cir. 2007) to highlight the importance the United States government places on  
22 security over electronically stored communications. Although it is true that Plaintiff  
23 cannot object on the basis of the Fourth Amendment, Plaintiff *can* object on the  
24 grounds of privacy. *Heckenkamp* is therefore clear and dispositive on this issue; an  
25 individual does not waive their right to privacy and their reasonable expectation of  
26 privacy is not waived simply because they communicate through the internet. *Id* at  
27 1146-1148. Plaintiff cites to *Meek* for a similar reason; to demonstrate that a plaintiff  
28

1 does not relinquish his right to privacy simply because he communicated via the  
2 internet. *United States v. Meek*, 366 F.3d 705, 711-712 (9th Cir. 2004).

3 Plaintiff cites to *Cannon* and *Vasquez* to highlight when an individual would  
4 have a reasonable expectation of privacy; not about any matters that are specifically  
5 reserved for criminal law or the Fourth Amendment. *United States v. Cannon*, 264  
6 F.3d 875, 879 (9th Cir. 2001); *United States v. Vasquez*, 706 F. Supp. 2d 1015, 1021  
7 (C.D. Cal. 2010).

8 Defendants attempt to narrow the scope of the holdings of these cases and  
9 neglect the general principles these cases stand for; the importance of an individual's  
10 right to privacy which shall be upheld by courts unless it can be shown that the  
11 probative value of discovery outweighs potential harm. Defendants in bad faith  
12 misconstrue the cases cited by Plaintiff and intentionally misconstrue the reason  
13 Plaintiff cited to these cases with the sole intent to wrongfully discredit Plaintiff in  
14 front of this court and support their frivolous request for attorneys fees.

15 Indeed, there are civil cases that highlight the importance of privacy for  
16 individuals by invoking several sections of the California penal code, including the  
17 Wiretap Act. See *Campbell v. Facebook Inc.*, 310 F.R.D. 439, 443-445 (N.D. Cal.  
18 2015); See Also *Gusman v. Comcast Corp.*, 298 F.R.D. 592 (S.D. Cal. 2014). Plaintiff  
19 relies on these cases to demonstrate the protections California, the Ninth Circuit, and  
20 the United States as a whole have put in place not only for her rights to privacy in  
21 general, but also for her right to privacy through electronic communications.  
22 Furthermore, *Campbell* supports the contention that Defendants are blatantly wrong  
23 in their contention that it is improper to cite to a case citing the Wiretap Act to support  
24 a contention in a civil case, considering *Campbell* is a civil case and is entirely  
25 premised on Facebook, Inc.'s violation of the Wiretap Act.

26 **D. The Payment Of Legal Fees To Defendants Are Entirely Inappropriate**

27 Defendants ask for attorneys' fees for their opposition of Plaintiff's motion.  
28

1 First and foremost, Plaintiff filed her Motion for Protective Order per this Court's  
2 order for supplemental briefing. This alone makes Plaintiff's motion not frivolous and  
3 Defendants' request for attorneys' fees entirely unreasonable. Defendants demand for  
4 attorneys' fees under Fed. R. Civ. P. 37(a)(5)(B) is misplaced as this Rule only  
5 applies when a party moves for an order compelling disclosure or discovery. Fed. R.  
6 Civ. P. 37 (a) (1). Plaintiff did not move to compel disclosure or discovery. A request  
7 for sanctions under Fed. R. Civ. P. 37 (a)(5)(B) is only appropriate when a party  
8 moves to compel discovery and that party has their motion denied. Given this is not  
9 the case here, Defendants are not entitled to attorneys' fees.

10 Assuming *arguendo* that sanctions could be granted in this situation, sanctions  
11 are only appropriate when the motion was "not substantially justified or other  
12 circumstances make an award of expenses unjust." Fed. R. Civ. P. 37 (a)(5)(B). As  
13 discussed, it was pursuant to this Court's own order that Plaintiff filed this Motion.  
14 Finally, the filing of this Motion was justified as it is Plaintiff's only avenue for  
15 redress in protecting her right to personal and financial privacy.

16 **III. CONCLUSION**

17 Based on all of the foregoing, Plaintiff humbly requests that this honorable  
18 Court grant Plaintiff's Motion to Protective Order.

19  
20 Dated: July 2, 2024

BIBIYAN LAW GROUP, P.C.

21 */s/ Sarah H. Cohen*

22 DAVID D. BIBIYAN

JEFFREY D. KLEIN

SARAH H. COHEN

23 RAFAEL YEDOYAN

24 Attorneys for Plaintiff,  
MACKENZIE ANNE THOMA,  
25 individually and on behalf of other  
26 similarly situated persons  
27  
28



**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1460 Westwood Boulevard, Los Angeles, California 90024.

On July 2, 2024, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER** to be served by electronic transmission to the below referenced electronic e-mail address as follows:

Brad S. Kane  
Kane Law Firm  
1154 S Crescent Heights Blvd.,  
Los Angeles, Ca 90035  
Office: 323-937-3291  
bkane@kanelaw.la

Trey Brown  
11337 Ventura Boulevard,  
Studio City, CA 91604  
trey.brown@vixenmediagroup.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 2, 2024 at Los Angeles, California.

/s/ Aaron Quirarte  
Aaron Quirarte